Supreme Court of the United States

OCTOBER TERM, 1969

No. 661

HELLENIC LINES LIMITED and UNIVERSAL CARGO CARRIERS, INC.,
Petitioners

versus

ZACHARIAS RHODITIS,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND BRIEFS OF AMICI CURIAE IN SUPPORT THEREOF

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND BRIEFS OF AMICI CURIAE IN SUPPORT THEREOF.

ARGUMENT AGAINST GRANTING CERTIORARI

IF IT PLEASE THIS HONORABLE COURT:

I.

THERE IS NO CONFLICT, AS TO ANY MATTER OF LAW, BETWEEN THE FIFTH CIRCUIT'S DECISION IN THE INSTANT CASE* AND THE SECOND CIRCUIT'S DECISION IN THE TSAKONITES CASE.

Whether the Jones Act, 46 U.S.C. §688, is applicable to this controversy is a pure question of fact. The writer of the annotation "Jones Act-Foreign Vessels" at 84 A.L.R. 2d 906, digesting all the cases cited by Petitioners, and many more, observes:

> "* * * the test of applicability of the Jones Act cannot be delineated *except* by reference to specific *factual* situations." 84 A.L.R. 2d 906, 907. (Emphasis supplied.)

In *Bartholomew v. Universe Tankships, Inc.* (2 Cir. 1959) 263 F.2d 437, the court described the decisional process in this type of case as involving

> "* * * the ascertainment of the *facts* or *groups of facts* which constitute contacts between the transaction involved in the case and the United States." 263 F. 2d 437, 441. (Emphasis supplied.)

And again:

> "The *facts* either warrant the application of the Jones Act or they do not." 263 F. 2d 437, 443. (Emphasis supplied.)

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*(S.D. Ala. 1967) 273 F. Supp. 248, affirmed (5 Cir. 1969) 412 F.2d 919.

In *Tsakonites v. Transpacific Carriers Corp.* (S.D.N.Y. 1965) 246 F. Supp. 634, affirmed (2 Cir. 1967) 368 F. 2d 426, cert. den. (1967) 386 U.S. 1007, 18 L. Ed. 2d 434, 87 S. Ct. 1348, the case upon which Petitioners rely to establish the existence of a conflict with the Fifth Circuit's decision in the instant case, the District Court for the Southern District of New York based its decision exclusively on this principle:

> "Plaintiff has chosen to stand on American law. We thus direct our attention to the *basic issue* of whether there are sufficient *facts* before this Court to justify the application of American Law." 246 F. Supp. 634, 636. (Emphasis supplied.)

Respondent takes this Court's denial of certiorari in the *Tsakonites* case as mere recognition that its outcome below depended exclusively on a determination of facts.

The type of conflict between circuit courts of appeals contemplated as a reason for granting certiorari by Rule 19 (1)(b), 28 U.S.C. Rules of Supreme Court, is as to matters of law, not as to conclusions which depend upon an appreciation of facts and circumstances which admit of different interpretations. Cf. *Bandini Petroleum Co. v. Superior Ct.* (1931) 284 U.S. 8, 76 L. Ed. 136, 52 S. Ct. 103; *General Trading Co. v. State Tax Comm.* (1944) 322 U.S. 335, 349, 88 L. Ed. 1309, 1319, 64 S. Ct. 1028, 1030; *Milk Wagon Drivers Union v. Meadowmoor Dairies* (1941) 312 U.S. 287, 715, 85 L. Ed. 836, 1145, 61 S. Ct. 552, 803; *Fox Film Corp. v. Muller* (1935) 296 U.S. 207, 80 L. Ed. 158, 56 S. Ct. 183; *United States v. Jefferson Electric Mfg. Co.* (1934) 291 U.S. 386, 78 L. Ed. 859, 54 S. Ct. 443; *Lewellyn v. Electric Reduction Co.* (1927) 275 U.S. 243, 72 L. Ed. 262, 48 S. Ct. 63;

Federal Trade Com. v. American Tobacco Co. (1927) 274 U.S. 543, 71 L. Ed. 1193, 47 S. Ct. 663. That this principle applies to the type of Jones Act suit under consideration was specifically recognized by this Court in *Lauritzen v. Larsen* (1953) 345 U.S. 571, 97 L. Ed. 1254, 73 S. Ct. 921, where, after citing similar cases which had reached opposite results, it noted in Footnote No. 3 that

> "* * * their contrary results do not necessarily mean inconsistency." 345 U.S. 571, 573, 97 L. Ed. 1263, 73 S. Ct. 921, 924.

Accordingly, Respondent submits that the instant case does not create the kind of conflict between circuits that might serve as a reason for granting certiorari.

II.

AS A MATTER OF LAW THE JUDGMENTS OF THE DISTRICT COURT AND THE FIFTH CIRCUIT IN THE INSTANT CASE ARE SUSTAINED BY THE EVIDENCE.

Respondent recognizes that this Court will examine a record to ascertain whether as a matter of law the findings below are sustained by the evidence; *Chicago G.W.R. Co. v. Rambo* (1936) 298 U.S. 99, 80 L. Ed. 1066, 56 S. Ct. 693, reh. den. 298 U.S. 692, 80 L. Ed. 1409, 56 S. Ct. 945. The conclusions drawn from the evidence in the case at bar by Petitioners and their Friends, in their Briefs before this Court (as to: A. the diplomatic immunity of Petitioners' owner; B. the availability to Respondent of a cumulative remedy in Greece; C. the significance of Respondent's

employment contract; D. the significance of Petitioner Hellenic Lines, Ltd.'s incorporation in Greece; and E. the interest of the Greek Government in the internal order of Petitioners' vessel), would, if believed, point so alarmingly toward a re-examination of the Record, that Respondent sees fit to demonstrate the complete erroneousness of these conclusions separately, as follows:

A.

MR. CALLIMANOPOULOS, OWNER OF THE PETITIONER CORPORATIONS, HAS NEVER ENJOYED DIPLOMATIC IMMUNITY IN THE UNITED STATES.

Petitioners assert that the evidence established that their owner, Mr. Pericles Callimanopoulos, enjoys diplomatic immunity in the United States, which Respondent concedes would, if true, absolutely exempt him from allegiance to the United States, from subjection to its laws, and from the presumption of domicil attaching to his continuous residence here; and they argue that the District Court and the Fifth Circuit erred in disregarding this supposed immunity and in treating him as an ordinary resident alien. However the only evidentiary basis for their assertion is the District Court testimony of their Insurance and Claims Manager, Mr. Gerald Hennesey of New York City, that Mr. Callimanopoulos has merely been a member of the Greek Delegation to the United Nations since 1963 (R. 114-116).

Diplomatic immunity is a political question, involving such delicate relations between the United States and

friendly powers that the courts of this country properly refuse to accept as conclusive any other evidence whether a particular person enjoys it than a determination thereof by the executive branch of our government; *Trost v. Tompkins* (Mun. Ct. App. Dist. Col. 1945) 44 A. 2d 226 (in which the Assistant Commissioner for Shipping and Immigration of the Royal Yugoslav Government, engaged here in representing the interests of his government before the "Inter-Allied Shipping Pool", employed and supervised by the Yugoslav Ambassador to the United States and provided by the latter with an office in the Yugoslav Embassy Building in Washington, D.C., was held, on the say-so of the executive branch, not diplomatically immune here).

The Chief of Protocol of the Department of State and his Assistants make the determination of immunity on behalf of the executive branch, and their rulings only are binding on the courts; *Arcaya v. Paez* (D.C.N.Y. 1956) 145 F. Supp. 464, affirmed (2 Cir. 1957) 244 F. 2d 958. The only members of foreign nation delegations to the United Nations who enjoy diplomatic immunity in the United States are the envoys extraordinary and ambassadors and ministers plenipotentiary; Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United Nations, § 15, P.L. 357, 80th Congress, 1st Session, Joint Res. Aug. 4, 1947, ch. 482, 61 Stat. 756, 762. Their employees may never have capacity to assert diplomatic immunity in their own behalf, the intervention of the recognized representative of the nation involved being absolutely required; *Trost v. Tompkins, supra*; *Agency of Canadian Car & Foundry Co. v. American Can Co.* (2 Cir. 1919) 258 F. 363. When a diplomat whose mission is terminated, instead of returning to his own country remains and

engages in business here he forfeits any immunity he may have enjoyed; *Ex parte Hiltz* (1884) 111 U.S. 766, 28 L. Ed. 592, 4 S. Ct. 698. Our courts recognize that diplomatic visas are frequently issued as a matter of courtesy and refuse to consider them as establishing diplomatic immunity; *U. S. v. Coplon* (D.C.N.Y. 1950) 88 F. Supp. 915. Even consuls, vice consuls and trading consuls, in all that concerns their trade, are subject to the laws of the United States in the same way as native merchants are; *Hall v. Coppel* (1868) 7 Wall. (U.S.) 542, 19 L. Ed. 244; *De Leon v. Walters* (1909) 163 Ala. 499, 50 So. 934.

The foregoing authorities abundantly support the District Court's and the Fifth Circuit's failure to mention a word about Petitioners' assertion of Mr. Callimanopoulos' diplomatic immunity, on which so much of their Argument for Certiorari is now pitched, seeing that their assertion is based on nothing more than the weightless and insufficient testimony of Petitioners' own Mr. Hennesey.

Letters appended hereto, of the Department of State and of the United States Mission to the United Nations, conclusively resolve this issue against Petitioners. In support of the propriety of appending these letters at this stage, Respondent cites, ironically, *Hellenic Lines, Ltd. v. Moore* (U.S. App. Dist. Col. 1965) 345 F. 2d 978, in which the Court of Appeals, obviously at the appellate stage of the proceedings, requested and obtained from the Department of State the information as to the diplomatic immunity of the Tunisian Ambassador to the United States upon which it based its decision; Footnote No. 3, 345 F. 2d 978, 980.

Respondent annexes hereto as Appendix A-1 a facsimile reproduction of a letter of determination of Mr. Harold A.

Pace, Assistant Chief of Protocol, Department of State of the United States, dated February 15, 1968, stating that Mr. Callimanopoulos has never been accredited to the United States in any capacity as a diplomatic officer of the Greek Government; and as Appendix A-2 a facsimile reproduction of a letter of Bess N. Trinks, the Privileges and Immunities Officer of the United States Mission to the United Nations, dated April 1, 1968, stating that Mr. Callimanopoulos has no representative status or other connection with the Permanent Mission of Greece to the United Nations.

Respondent further notes that: Mr. Callimanopoulos has lived here, managing Petitioners, since 1945 (Libellant (Respondent)'s Ex. 3 (Deposition of Callimanopoulos) pp. 5-6); he did not mention any diplomatic status since 1963 in his Deposition, taken on January 10, 1964, though closely questioned about the purpose of his residence here (Respondent's Ex. 3, pp. 5-6); and not a word about his vaunted diplomatic status appears in the Record of or the numerous briefs filed in the *Tsakonites* case, cited *supra*, from 1965 through 1967 during its progress through every level of the United States Courts, or in the Brief on behalf of the Royal Greek Government as *Amicus Curiae* submitted in the instant case.

In any event the Fifth Circuit based its decision in the instant case not only on Mr. Callimanopoulos' status as a resident alien here but also on the fact that the Petitioner corporations are commercially domiciled here; 412 F. 2d 919, 924-925.

B.

PETITIONERS ARE INCOMPETENT TO CREATE THE LEGAL EXISTENCE OF A "CUMULATIVE REMEDY" IN ANOTHER JURISDICTION BY FOLLOWING RESPONDENT THERE AND STUFFING A LITTLE MONEY INTO HIS POCKETS BEHIND HIS LAWYERS' BACKS, NOR DOES RESPONDENT'S ACCEPTANCE OF SUCH MONEY PRECLUDE RECOVERY UNDER THE JONES ACT.

The Fifth Circuit specifically observed that both sides of this litigation failed to adduce sufficient evidence to prove whether the law of Greece affords Respondent a remedy, and, accordingly, that Court conceded its inability to either reject or accept the proposition that he lacks access to a foreign forum; Footnote No. 6, 412 F. 2d 919, 922.

Petitioners argue however that Respondent's acceptance of "money under Greek law" from them when he returned to Greece after his institution, through counsel, of these Jones Act proceedings in the District Court, establishes that a remedy under Greek law is available to him, and that to now grant him relief under the Jones Act here would unfairly subject them to cumulative liabilities. The only hint of any pertinent thrust in this argument, as it might apply to the granting of certiorari in this case, seems to be in the direction of a concept of election of remedies, and if this is what it is, it is badly taken, for this Court has made it clear that accepting benefits upon which the payor has attempted to stamp the label of one substantive remedy does not amount to an election

precluding subsequent formal pursuit of another, the inquiry in the case of the formally pursued remedy always remaining one of its intrinsic applicability *vel non*, irrespective of the previous acceptance by the claimant of other benefits; *Pacific S.S. Co. v. Peterson* (1928) 278 U.S. 130, 73 L. Ed. 220, 49 S. Ct. 75 (acceptance of admiralty maintenance and cure and wages held not an election precluding subsequent proceedings for Jones Act damages); *Pritt v. W. Va. N.R. Co.* (W. Va. 1948) 132 W. Va. 184, 51 S.E. 2d 105, cert. den. (1949) 336 U.S. 961, 93 L. Ed. 1113, 69 S. Ct. 891 (acceptance of state workmen's compensation benefits held not an election precluding subsequent proceedings for Jones Act damages); and *Calbeck v. Travelers Ins. Co.* (1962) 370 U.S. 114, 8 L. Ed. 2d 368, 82 S. Ct. 1196 (acceptance of state workmen's compensation benefits held not an election precluding subsequent proceedings for federal Longshoremen's and Harborworkers' Compensation benefits).

The *Pacific S. S. Co.*, *Pritt* and *Calbeck* cases cited *supra* do indicate that where subsequent recovery under another remedial law is forthcoming, either the party having accepted the gratuitous benefits must give them back or the payor is entitled to credit for them against such subsequent recovery, but none of those cases involved tender and acceptance of benefits to the prejudice of an attorney's privilege. Unusually severe judicial criticism was levelled at this practice among Greek label shipowners of bypassing plaintiffs' counsel in *Katopodis v. Liberian S/T OLYMPIC SUN* (E.D. Va. 1968) 282 F. Supp. 369, and there is no question but that Petitioners' behavior here violates with striking faithfulness every line of the pattern of conduct denounced in that case

(except that here Petitioners did not obtain a release of liability from Respondent). It does not seem unfair to leave Petitioners with the consequences of their own bad faith in this regard.

C.

THE TERMS OF RESPONDENT'S WORK CONTRACT DO NOT AFFECT THE QUESTION OF JONES ACT APPLICABILITY.

Respondent finds the translation of his employment contract furnished by Petitioners (R. 18-20) to be misleadingly free and incomplete, and accordingly appends its original as Appendix B-1 for translation at this Court's order in accordance with Rule 37, 28 U.S.C. Rules of Supreme Court.

Respondent points to the contract's identification of the party of the first part, translated by Respondent as follows:

1. *CONTRACTING PARTIES*

a) The Master or the legal representative of the Master or Vessel Owner
of the S/S, M/S, or M/V HELLENIC HERO
of the Vessel Owner "HELLENIC LINES" LTD.

It is obvious that there was nondisclosure of the name of the registered owner of the vessel, the Panamanian corporation Petitioner Universal Cargo Carriers, Inc. The contract therefore never became binding in any way as between Respondent and Petitioner Universal, as no man

can be compelled, despite nondisclosure in a contract, to deal under that contract with persons with whom he does not wish to deal; *Arkansas Valley Smelting Co. v. Belden Min. Co.* (1888) 127 U.S. 379, 32 L. Ed. 246, 8 S. Ct. 1308; *Roof v. Morrison*, 37 Ill. App. 37; *Boston Ice Co. v. Potter*, 123 Mass. 28. That this nondisclosure is material in sofar as it affects choice of law cannot be disputed.

Respondent further calls attention to the contract's provisions as to applicable law and jurisdiction, which are dealt with in the paragraphs thereof translated by Respondent as follows:

APPLICABLE LAW AND JURISDICTION

> This *contract* shall be governed solely and exclusively by the Laws of Greece and the Greek Collective Agreements.
>
> It is further agreed that any claim or dispute flowing from this *maritime hiring engagement or contract*, or howsoever based directly or indirectly *on this contract*, or based directly or indirectly *on any labor or job classification served* on the vessel by the seaman, shall be adjudged and adjudicated solely and exclusively by the Courts of Greece. (Emphasis supplied.)

The Brief submitted herein by the Union of Greek Shipowners and the Greek Chamber of Shipping as *Amici Curiae* shows that the Greek Collective Agreements, upon which this contract is based and to which the Greek Courts are to advert for the resolution of seamen's disputes, are a series of agreements arrived at by collective bar-

gaining between the Union of Greek Shipowners and the Panhellenic Seamen's Federation (Brief of Union of Greek Shipowners and Greek Chamber of Shipping as *Amici Curiae*, pp. 2-3). These collective bargaining agreements, as their very name implies, are addressed to no more than matters of the manning scales, wages, hours and conditions of work, standards of accommodations and pensions applicable to different types of maritime work. Interpreted in this light it is clear that the contract's words, "disputes . . . based on any labor or job classification served on the vessel by the seaman," refer to no more than contract disputes relative to such matters; tort suits for injuries are not mentioned, and certainly the rule of narrow interpretation of the instrument's vague clauses against its writer would seem to apply. And self-evidently, a Jones Act suit is for tort, not for enforcement of anything due under a contract or for damages for its breach.

In any event, the question in the instant suit would still remain, as always in suits of this type, that of the intrinsic applicability *vel non* of the Jones Act, regardless whether this contract were construed as relating also to tort controversies, since no contract, rule, regulation or device whatsoever is competent to abrogate a shipowner's liability under the Jones Act; 45 U.S.C. §55, incorporated into the Jones Act by reference, 46 U.S.C. §688.

D.

THE ORIGINAL INCORPORATION OF PETITIONER HELLENIC LINES, LTD. IN GREECE IN 1934 HAS BEEN A MATTER OF INSIGNIFICANCE SINCE ITS IMMIGRATION INTO NEW YORK CITY IN 1945.

The District Court found below that Petitioner Hellenic's owner has been managing Hellenic continuously since 1945 in New York City, where it has its principal offices and where all its ships are operated. Moreover the record in the *Tsakonites* case, cited *supra*, discloses that this Petitioner obtains all its financing from a New York bank. Petitioners insist however that the law of the incorporating nation rather than that of the forum should apply. In *Mansfield Hardwood Lumber Co. v. Johnson* (5 Cir. 1959) 268 F. 2d 317, 321, the court applied the law of the forum to a corporation rather than the law of the incorporating state, holding that such contacts of the corporation with the forum state as residence of parties and actors, and conduct therein of the corporation's principal business, outweigh the naked fact of incorporation elsewhere. Respondent submits that Petitioner Hellenic's incorporation in Greece has become similarly remote and insignificant by virtue of its wholesale transimplantation over into New York City.

E.

PETITIONERS AND THEIR FRIENDS HAVE FAILED TO PROVE ANY INTERNATIONAL OR OTHER LAW CONFERRING ON THE GREEK GOVERNMENT A LEGITIMATE INTEREST IN OR RIGHT TO REGULATE THE INTERNAL ORDER OF A PANAMANIAN PERSON'S SHIP.

Mr. Callimanopoulos has taken the trouble to insert a Panamanian corporation as registered owner not only between himself and the S/S HELLENIC HERO but between that vessel and the nation of its flag. Rank speculation has no place in this Brief, but Respondent cannot but wonder over Mr. Callimanopoulos' distrust of the sudden confiscatory policies of an ever-changing Greek Government. In any event he has also seen fit since 1960 to refer disputes between Petitioner Hellenic and Petitioner Universal for disposition in accordance with the Arbitration Law of the State of New York (R. 41). Certainly his scrambling up of a United States domicile and base of operations with Panamanian ownership, New York arbitration law and a Greek flag has already done more to disrupt the internal order of the S/S HELLENIC HERO than application of the Jones Act to this transaction could accomplish. Cf. *Kyriakos v. Goulandris* (2 Cir. 1945) 151 F. 2d 132, in which the Court observed that application of the Jones Act to a controversy involving a Greek flag vessel owned by a Panamanian corporation

> "* * * would not invade the (vessel's) internal economy * * * further than has already been

done * * *" 151 F. 2d 132, 138. (Parentheses added.)

Petitioners complain that denial of certiorari in the instant case would have the confusing consequence of leaving them subject to the Jones Act in the Fifth Circuit and to Greek law in the Second Circuit. Respondent points out that Petitioners have utterly forsaken their espoused loyalty to Panama in bypassing all question of the applicability of Panamanian law, which provides for benefits to seamen very similar to those provided by the Jones Act and the admiralty jurisprudence of the United States; cf. *Rodriguez v. Gerontas Cia. de Nav., S.A.* (S.D.N.Y. 1957) 150 F. Supp. 715, affirmed (2 Cir. 1958) 256 F. 2d 582 and *Morewitz v. S.S. MATADOR* (4 Cir. 1962) 306 F. 2d 144. Thus it is apparent that Petitioners' scrambling up of their national ties underscores a quest on their part to avoid all law but the most remote and the least onerous. The confusion in which they now find themselves is exactly what they have bargained for, and to be left there is exactly what they deserve.

III.

REBUTTAL OF AMICUS BRIEFS

A.

BRIEF OF THE ROYAL GREEK GOVERNMENT AS AMICUS CURIAE

This *Amicus* Brief displays a patent lack of fidelity to the language of the Fifth Circuit's Opinion in this case by

misrepresenting it. It refers to the Fifth Circuit as having decided this case solely on the basis of the tort's occurrence in the United States; accuses it of having totally disregarded Respondent's Greek citizenship; and blames it for overlooking the law of the vessel's Greek flag solely because Mr. Callimanopoulos lives in the United States. Reference to the Fifth Circuit's Opinion shows that that Court specifically rejected the place of the tort as a solely determinative factor (412 F. 2d 919, 924-925); expressly recognized that Respondent is a Greek citizen (412 F. 2d 919, 920 & Footnote No. 6, 922) and stated this was not important in view of the weightier facts of United States contacts (412 F. 2d 919, 923); and overlooked the law of the vessel's Greek flag because it is owned *and operated* from a principal place of business in the United States. (412 F. 2d 919, 923).

B.

BRIEF OF THE UNION OF GREEK SHIPOWNERS AND GREEK CHAMBER OF SHIPPING AS AMICI CURIAE

The Greek Chamber of Shipping, despite its deceptive name, is not an agency of the Greek Government but merely a lobbying organization, as will appear by reference to the letter of Edwin K. Reid, Esquire, of counsel for this *Amicus*, dated September 4, 1969, appended hereto as Appendix C (p. C-1). It further appears from this letter that Petitioners are members of both *amicus* organizations, and Respondent notes that the attorneys for these *amici*, the New York firm

of Zock, Petrie, Sheneman & Reid, were the record counsel for Petitioner Hellenic Lines, Ltd. in the *Tsakonites* case, cited *supra*. It is therefore apparent that these *amici* and their attorneys are acting more for their own interest and for the interest of their clients than for the personal benefit of this Court; cf. *Nicklas v. Ajax Electric Co.* (Tex. Civ. App. 1960) 337 S.W.2d 163; *In re Olhauser's Estate* (So. Dak. 1960) 101 N.W.2d 827.

Nor is their Brief entitled to any greater regard as calling attention to material law, facts or circumstances not presented to this Court as between Petitioners' and Respondent's Briefs; cf. *Kemp v. Rubin* (1946) 64 N.Y.S. 2d 510. They make the extravagant suggestion that the Fifth Circuit's decision in this case could be applied to, e.g., Cunard Lines to subject its British employes to the Jones Act. Until it appears that Cunard has one owner who has been living in the United States and operating the QUEEN ELIZABETH or other British flags from a *principal* place of business in New York for over twenty years, such astonishing hypotheses are unworthy of serious thought.

By quoting out of context, at p. 5 of their Brief, language of the *Lauritzen* case, cited *supra*, which appears at p. 581 of 345 U.S., they attempt to create the appearance that this Court expressly ruled out the situs of a vessel's base of operations as an important fact affecting Jones Act applicability, whereas what this Court was actually discussing in the quoted language, as reference to the surrounding portions of the *Lauritzen* opinion will show, was United States contacts incidental to the conduct of a *bona fide* foreign operation, not a principal place of business and base of operations in the United States.

They attempt to elevate the terms of Respondent's work contract to the status of the ultimately dispositive element in this controversy by quoting, again out of context, at p. 7 of their Brief, language from *Lauritzen* as to the law that *would* apply in *contract* matters which appears at p. 589 of 345 U.S. That the quoted language was *obiter dictum* is rendered obvious by this Court's statement in the previous paragraph that

> "* * * a Jones Act suit is for tort, * * * this action does not seek to recover anything due under the contract or damages for its breach." 345 U.S. 571, 588, 97 L. Ed. 1254, 1271, 73 S. Ct. 921, 931.

Further attention to their Brief is unmerited.

CONCLUSION.

Applicability of the Jones Act to this controversy is a pure question of fact and certiorari does not lie to resolve conflicts between circuits arising out of differing conclusions drawn from facts alone. The instant facts do not warrant the alarming conclusions drawn by Petitioners, which if believed might justify the granting of certiorari, that their owner is diplomatically immune, that the Fifth Circuit's decision unfairly subjects them to cumulative liabilities, that Respondent's work contract has any effect on intrinsic applicability of the Jones Act *vel non*, that Petitioner Hellenic Lines, Ltd.'s original incorporation in Greece can still affect choice of law now that it is domiciled and performs all its managerial and operative functions in New York City, or that the Greek Government has an enforceable interest in a Panamanian's ship. Removed from the deceptive shadows of these erroneous conclusions, the Fifth Circuit's

decision is undoubtedly correct on the facts. And Petitioners' confusion as to the conflicting status of their obligations in the Second and the Fifth Circuits is exactly what they have bargained for by scrambling up their national ties between Greece, the United States and Panama in order to avoid applicable law.

Respectfully submitted,

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DEPARTMENT OF STATE

Washington, D.C. 20520

D

February 15, 1968

Mr. Arthur J. Mandell,
Mandell & Wright,
Seventh Floor South Coast Building,
Main at Rusk Street,
Houston, Texas.

Dear Mr. Mandell:

Replying to your letter of February 14, a check of the records in the Office of the Chief of Protocol failed to produce any evidence of Mr. Pericles Callimanopoulos now being or having been accredited to the United States in any capacity as a diplomatic officer of the Greek Government.

Sincerely yours,

Harold A. Pace

Harold A. Pace
Assistant Chief of Protocol

UNITED STATES MISSION TO THE UNITED NATIONS

799 United Nations Plaza
New York, N. Y. 10017

YUkon 6-3434

April 1, 1968

Mr. Arthur J. Mandell
Mandell & Wright
Attorneys and Counselors
Seventh Floor South Coast Building
Main at Rusk Street
Houston, Texas 77002

Dear Mr. Mandell:

I am very sorry there has been such a long delay in responding to your inquiry concerning Mr. Pericles Callimanopoulos. We had to check several possible sources of information. Mr. Callimanopoulos does not appear to have any representative status or other connection with the Permanent Mission of Greece to the United Nations.

I trust this will answer your query.

Sincerely yours,

Bess N. Trinks
Privileges and Immunities
Officer

ΣΥΜΒΑΣΙΣ ΝΑΥΤΙΚΗΣ ΕΡΓΑΣΙΑΣ

ΣΥΜΦΩΝΩΣ ΤΩ Κ.Ι.Ν.Δ. (ΑΡΘΡΟΝ 53 ΚΑΙ 54)

1. ΣΥΜΒΑΛΛΟΜΕΝΑ ΜΕΡΗ

α) Ὁ Πλοίαρχος ἢ ὁ νόμιμος ἀντιπρόσωπος τοῦ Πλοιάρχου ἢ τοῦ Ἰδιοκτήτου .....

τοῦ Α) Π, Μ) S, Π) Κ ΗΕΛΕΝΑ G-HERO

Νηολογίου ΠΕΙΡΑΙΩΣ κ.ο.χ 7.068 Δ.Δ.Σ. S.V.G.M.

Πλοιοκτήτου Α.Ε. «ΕΛΛΗΝΙΚΗ»

Κατοίκου ..... ὁδὸς ΑΚΤΗ ΜΙΑΟΥΛΗ ἀριθ. 3

Διαχειριστοῦ συμπλοιοκτησίας (ἐφ' ὅσον ὑπάρχει) .....

Κατοίκου ..... ὁδὸς ..... ἀριθ. .....

καὶ β) Ὁ Ναυτικὸς ΡΟΪΤΗΣ ΖΑΧΑΡΙΑΣ

γεννηθεὶς ἐν ΜΑΓΝΗΣΙΑ τὸ ἔτος 1927 Μ.Ε.Θ. 17449

συνεφώνησαν τὴν ἐπὶ τοῦ ἀνωτέρω σκάφους ναυτολόγησιν τοῦ δευτέρου συμβαλλομένου ὑπὸ τοὺς κάτωθι ὅρους :

Εἰδικότης ναυτολογήσεως ΝΑΥΤΗΣ

Μισθὸς καὶ ὅροι ἐργασίας τῆς Συλλογικῆς Συμβάσεως.

Διάρκεια Συμβάσεως : Ἐν κυκλικὸν τὰ ξίδιον ἀρχόμενον ἐξ ΕΛΛΑΔΟΣ καὶ λῆγον εἰς ΕΛΛΑΔΑ, ΑΔΙΑΚΡΙΤΩΣ Λιμένων Φορτοεκφορτώσεως μετὰ προσέγγισιν εἰς λιμένας Η.Π.Α., ΙΝΔΙΩΝ ἢ καὶ ΠΕΡΣΙΚΟΥ ΚΟΛΠΟΥ.

2. ΕΙΔΙΚΟΙ ΟΡΟΙ

α) .....

β) .....

ΕΦΑΡΜΟΣΤΕΟΣ ΝΟΜΟΣ ΚΑΙ ΔΙΚΑΙΟΔΟΣΙΑ

3) Ἡ παροῦσα σύμβασις θὰ διέπηται ἀποκλειστικῶς καὶ μόνον ὑπὸ τῶν Ἑλληνικῶν Νόμων καὶ τῶν Ἑλληνικῶν Συλλογικῶν Συμβάσεων.

Συμφωνεῖται περαιτέρω, ὅτι οἱαδήποτε ἀπαίτησις ἢ διαφορὰ ἀπορρέουσα ἐκ τῆς παρούσης ναυτολογήσεως ἢ συμβάσεως ἢ ἐρειδομένη ὁπωσδήποτε ἀμέσως ἢ ἐμμέσως ἐπὶ τῆς παρούσης συμβάσεως ἢ ἐρειδομένη ἀμέσως ἢ ἐμμέσως ἐφ' οἱασδήποτε ἐργασίας ἢ ἀπασχολήσεως παρασχεθείσης ἐπὶ τοῦ πλοίου παρὰ τοῦ ναυτικοῦ θὰ κρίνεται καὶ ἐκδικάζεται ἀποκλειστικῶς καὶ μόνον παρὰ τῶν Ἑλληνικῶν Δικαστηρίων.

4) Τὸ ἀτμόπλοιον εὑρίσκεται εἰς ΗΡΑΚΛΕΙΟΝ

Ἐν ΗΡΑΚΛΕΙΟ τῇ 11ΟΛ. 1965

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ΤΑ ΣΥΜΒΑΛΛΟΜΕΝΑ ΜΕΡΗ

Ὁ Πλοίαρχος

Ὁ Ναυτολογούμενος

ΕΛΛΗΝΙΚΟΝ ΛΙΜΕΝΙΚΗ ΑΡΧΗ

Παρατηρήσεις:

Ἡ παροῦσα σύμβασις χρονολογεῖται καὶ ὑπογράφεται παρὰ τῶν συμβαλλομένων καὶ τῆς σχετικῆς Ἀρχῆς.

Βεβαιοῦται ἡ ἄγνοια γραμμάτων ἐκ μέρους τοῦ ναυτολογουμένου.

Η ΛΙΜΕΝΙΚΗ ΑΡΧΗ ΠΕΙΡΑΙΩΣ

ZOCK, PETRIE, SHENEMAN & REID

ANTHONY N. ZOCK
SHERMAN V. PETRIE, Jr.
EDWIN K. REID
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September 4, 1969

Mr.Ross Diamond,Jr.
Messrs.Diamond,Lettof & Favre
VanAntwerp Building
Mobile,Alabama 36601

Re: SS HELLENIC HERO - Zacharias Rhoditis - our ref. #5504

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Dear Mr.Diamond:

We have been retained by the Greek Union of Shipowners and the Chamber of Shipping of Greece to file a brief amicus curiae with the U.S.Supreme Court.

Rule 42 of the U.S.Supreme Court provides that a brief of amicus curiae may be filed only upon written consent of all parties or upon the granting by the Court of a motion upon leave to file.

To avoid a motion for leave to file we would appreciate a reply letter from you simply stating that consent is hereby given to the filing of an amicus curiae brief by the Union of Shipowners and the Chamber of Shipping of Greece.

Briefly, the members of the Chamber of Shipping of Greece are currently the owners of Greek Flag vessels irrespective of size or kind. There are several thousand members who between them own about seven-eight million gross tons of shipping. It is a consultant organization to the Ministry of Mercantile Marine on matters affecting Greek shipping, and is represented in International Conferences on general shipping questions. It has concern for matters covered by the Greek Collective Agreements by and between Greek Shipowners and the Greek Maritime Trade Unions aboard Greek flag vessels with respect to the law of the flag of the vessel and the laws contemplated in those agreements.

The Union of Greek Shipowners is composed of owners of Greek flag ocean going vessels of 1,000 tons or more and has a members nearly all Greek shipowners of some seven-eight million tons of shipping under

the Greek flag. The Union of Greek Shipowners is also interested in the Collective Bargaining Agreements and that internal events aboard a Greek flag vessel should remain covered by Greek law and by the law contemplated in those agreements. The Union of Greek Shipowners also represents the Greek owners in such matters as the negotiation of Collective Bargaining Agreements with the Greek Maritime Trade Unions, which agreement when approved by the Ministry of Mercantile Marine, are considered Greek law.

May we have your prompt reply?

Faithfully yours,

ZOCK, PETRIE, SHENEMAN & REID

EKR:MDJ

Edwin K. Reid

Edwin K.Reid

cc: Pillans,Reams,Tappan,Wood & Roberts, Attn: Mr.George Wood
Van Antwerp Building,Mobile,Alabama 36601